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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/030,966	06/20/2002	Stephen Richard Hellaby	0290-0180P	2811

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EXAMINER	
BECKER, DREW E	

ART UNIT	PAPER NUMBER
1761	

NOTIFICATION DATE	DELIVERY MODE
07/09/2007	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

mailroom@bskb.com

Office Action Summary

Application No.

10/030,966

Applicant(s)

HELLABY ET AL.

Examiner

Drew E. Becker

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 May 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3,5-8,11,12,15,16,20-24,26,31,32,41-45,47 and 48 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3,5-8,11,12,15,16,20-24,26,31,32,41-45,47 and 48 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1, 3, 5, 7-8, 11-12, 14-16, 20-24, 26, 31-32, 42-44, and 46-48 are rejected under 35 U.S.C. 103(a) as being unpatentable over GB 2093679A as applied above, in view of Bourns et al [Pat. No. 5,529,800] and Smagula et al [Pat. No. 5,011,704].

GB 2093679A teaches a dessert coating product comprising a suspension of particles in a carrier liquid, the food particles being in a monomodal range of 1-10 microns due to their simultaneous milling (page 1, line 122), the carrier liquid being a mixture of oils (page 1, lines 33-44), a solids content of 35-55% (page 1, line 34), flavor and seasoning components (page 2, line 25), the oil mixture being liquid at 17°C (page 1, line 77), the particles having been milled in a ball mill (page 1, lines 113), and an absence of nuts.

Phrases such as "said components have been milled... using a low shear high impact milling method" are merely preferred methods of making the claimed product. GB 2093679A does not recite a free-flow enhancing agent, an adhesiveness of at least 85%, the use of plum olein or rapeseed oil, and a viscosity of 50-100 mPa/s. Bourns et al teach a food product comprising a free-flow enhancing agent for granulated sugar (column 4, line 38), and the use of palm oil (column 5, line 67) and canola oil (column 6, line 1) which is a type of rapeseed oil. It would have been obvious to one of ordinary

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skill in the art to incorporate the oils and free-flow agent of Bourns et al into the invention of GB 2093679A since both are directed to dessert compositions, since GB 2093679A already included granulated sugar (page 2, line 24) and oils which need to be liquid at room temperature (page 1, line 55), since the palm oil and canola oil of Bourns et al were liquid at room temperature (column 6, line 65), and since the free-flow agent of Bourns et al helped to keep the sugar from clumping (column 4, lines 32-39). It would have been obvious to one of ordinary skill in the art that the combined product of GB 2093679A, in view of Bourns et al, would have provided an adhesiveness of at least 85% since the same materials were used, since GB 2093679A simply did not recite an adhesion value, since the "collet adhesion test" of applicant (page 11, line 10) was not a regulated or uniformly applied standard in the art, and since a greater degree of adhesion would have been beneficial by more efficiently applying the composition of GB 2093679A to a food. Smagula et al teach a fudge sauce with a viscosity of 5000 poise or less (column 2, line 39). It would have been obvious to one of ordinary skill in the art to incorporate the viscosity value of Smagula et al into the invention of GB 2093679A, in view of Bourns et al, since all are directed to food compositions, since GB 2093679A simply did not provide a value for the viscosity of the dessert sauce, and since fudge sauce commonly had a viscosity of 5000 poise or less (column 2, line 39) as taught by Smagula et al.

3. Claims 6 and 41 are rejected under 35 U.S.C. 103(a) as being unpatentable over GB 2093679A, in view of Bourns et al and Smagula et al, as applied above, and further in view of Myers et al [Pat. No. 5,871,781].

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GB 2093679A, Smagula et al, and Bourns et al teach the above mentioned components. GB 2093679A, Smagual et al, and Bourns et al do not recite calcium phosphate as the free-flow agent. Myers et al teach a food product comprising a free-flow agent in the form of calcium phosphate (column 10, line 67). It would have been obvious to one of ordinary skill in the art to incorporate the calcium phosphate of Myers et al into the invention of GB 2093679A, in view of Bourns et al, since all are directed to food products, since Bourns et al already included a free-flow agent (column 4, lines 32-39), and since calcium phosphate was a commonly used free-flow agent in foods as shown by Myers et al (column 10, lines 63-67).

Response to Arguments

4. Applicant's arguments filed 5/25/07 have been fully considered but they are not persuasive.

Applicant argues that GB 2093679A does not recite a monomodal composition. However, even though GB 2093679A does not specifically use the term "monomodal", it is clearly taught at page 1, line 120 where GB 2093679A described the milling taking place in one step. Applicant's own disclosure teaches that this would result in a monomodal distribution (page 5, line 26).

Applicant argues that Smagula et al is a "sugar-in-oil suspension" and does not have a viscosity of 30-200 mPa/s. However, Smagula et al clearly teach a fudge sauce with a viscosity of 5000 poise or less (column 2, line 39) as well as an absence of oil.

Applicant argues that the adhesiveness of at least 85% was an unexpected result. However, applicant has not provided any evidence that the products of GB 2093679A and Bourns et al did not possess this property.

Conclusion

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Drew E. Becker whose telephone number is 571-272-1396. The examiner can normally be reached on Mon.-Fri. 8am to 4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Keith Hendricks can be reached on 571-272-1401. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


DREW BECKER
PRIMARY EXAMINER
7-2-07